

REMARKS

The present response is filed to address the Official Action of September 7, 2007, and is timely filed within the three-month shortened statutory window for responding thereto. In view of the following comments, reconsideration of the Examiner's rejections and allowance of all pending claims is respectfully requested.

Claims 2-12 and 14-52 are pending in the present application. Each of these claims stands rejected.

Prior to addressing the rejections, Applicant wishes to extend his appreciation to Examiner Worrell for the courtesies exhibited during the telephonic interview of November 27, 2007 with the undersigned. During the interview, the Examiner and the undersigned discussed several issues.

The first issue related to the undersigned's inquiry as to the finality of the September 7, 2007 Official Action. It was confirmed during the interview that the outstanding Official Action is indeed non-final, and no Request for Continued Examination need be filed with the present response in order for it to be considered.

The Examiner and the undersigned also discussed the objections and rejections set forth in the outstanding Official Action. No agreement was reached as to ultimate patentability of the pending claims. However, the undersigned did discuss the drawing objections and it was agreed that the Examiner would review the originally filed drawings after ordering them from the Patent Office's remote storage facility. It is firmly believed that the original drawing sheets, submitted in a very high resolution, show each feature of the claimed invention and further that the drawings filed December 19, 2005 do not introduce new matter. In addition, and as will be detailed more fully below, the undersigned pointed to support in the originally filed specification for the claimed invention, which was questioned as lacking enablement. It is therefore requested

that each of the objections and rejections be favorably reconsidered, and this application be granted a Notice of Allowance.

To specifically address the objections and rejections of the outstanding Official Action, and to fortify the comments made during the telephonic interview, Applicant provides the following comments.

The drawings filed on December 19, 2005 have now been objected to under 35 U.S.C. § 132(a) as introducing new matter. As discussed in Applicant's Amendment entered concurrently therewith, the amended drawings show each of the claimed features of the invention. Further, the originally filed drawings, which were submitted at a high resolution, also show each of these features. As evidenced by the published application, it is regrettable that the clarity of the drawing figures have been significantly reduced during the Patent and Trademark Office's scanning process. During the telephonic interview, the Examiner indicated that he would order the original application file from offsite. Applicant extends his appreciation for this consideration, and trusts that the objection will be rendered moot when the replacement drawings are compared to those drawings filed with the original application. Reconsideration of the objection is therefore respectfully requested, and no replacement drawings are provided herewith.

The Examiner also rejected each of the pending claims under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Examiner states that it is not understood how the intersection area or attachment area is defined. The Examiner also questions how the intersection/attachment area is different from that taught in *Fineberg* (U.S. Patent No. 3,381,308).

As discussed in the Amendment mailed November 20, 2006, the intersection area and attachment area are used

interchangeably, and are described, among other locations, at paragraph [0104] of the specification. In that paragraph, the specification states "the crown 102 of the helmet 100 is shown to tear at an intersection area 121, or point where the horn 122 meets the crown, as if the horns grew from within the helmet through the interior surface 116 and exterior surface 124 [of the crown]. Portions of the crown 102 are thus shown to extend above the generally domed, or bowl-like crown. These raised or torn portions 126, generally form a skirt and circumscribe the intersection area 121 between the horn 122 and the crown 102 consisting of peaks 123 and valleys 125 of material formerly forming the intact crown 102 such that the raised area is jagged. Preferably, the intersection area 121 and raised portions 126 are non-geometric, so as to promote a natural appearance of the horns 122 having sprouted from within the helmet 100." In other words, the intersection area is the boundary where the secondary element (as described above, the horn) meets the crown.

Also as discussed in the Amendment mailed November 20, 2006, a simple analogy may assist to further describe the intersection area. Take, for example, a beverage cup placed on a flat surface, such as a desk. If one were to take a pencil and draw a circle around the base of the cup at the point where it meets (or intersects) with the desk, one would be circumscribing the intersection area between the cup and the desk. If the cup were then removed, one would see the intersection area as the area bound by the circular pencil marking. A similar procedure is discussed at paragraph [0096] of the specification, although in that particular embodiment the pencil outline includes the skirt, and therefore is not completely the intersection area as described elsewhere.

In order to further assist the Examiner in understanding the intersection area, Applicant presented FIGS. A and B in the Amendment mailed November 20, 2006. Applicant

requests that the Examiner review those figures in conjunction with the following.

As shown in FIG. A, the horn 122 extends from the crown 102 from an intersection area 121. The intersection area is formed at the intersection of the horn and the crown. The crown also includes a raised or torn portion 126 which extends above the intersection area. In FIG. B, the exterior surface 124 of the crown has been enhanced for clarity. It is clear in FIG. B that the exterior surface of the crown and the horn meet at an intersection area.

The intersection area is therefore believed to be sufficiently defined in the specification and shown in the drawing figures. Specifically, the intersection area is the portion of the headgear where the secondary element meets the crown. With specific reference to the embodiment shown in FIGS. 1-5, the intersection area 121 is that area where the horn 122 meets the crown 102. This is shown in FIGS. 1-5 and is also clarified in FIGS. A and B of the prior Amendment.

During the telephone interview of November 27, 2007, the Examiner expressed a concern that certain claims may cover a secondary element that attaches to a crown which already has a skirt. The Examiner's concern is apparently precipitated by his conclusion that the specification supports only a secondary element and skirt being formed together, and then being attached to the crown. Applicant does not believe that the specification, nor the claims, are so limited.

Indeed, the specification discusses multiple procedures by which the inventive headgear may be formed. In one particular procedure described beginning with paragraph [0078] of the specification, the inventor discusses a retrofitting process incorporating manufactured helmets readily available in the marketplace. The specification states that such a procedure is preferred for single items, where mass

produced items would be formed directly. (Specification paragraph [0078]).

In this procedure, using the horn as an example of the secondary element, the horn and the skirt are formed as a single unit and then adhered to the crown. Operative portions of this procedure are described in paragraph [0096] of the specification.

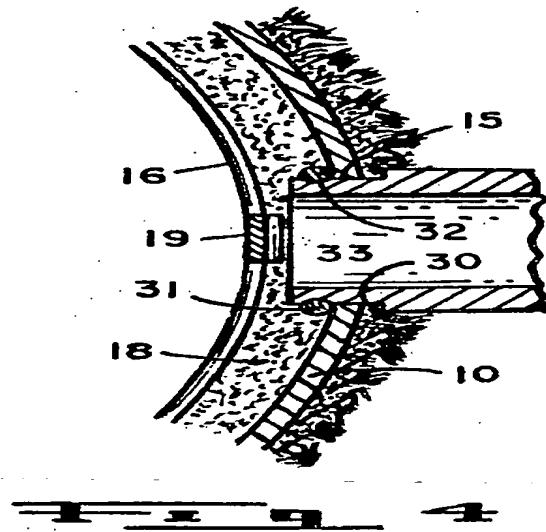
Nevertheless, the specification states that the procedure described, "is understandably most appropriate for a limited production run of horned helmets. Other procedures, which are likely more appropriate for mass production, but which would be prohibitively expensive for a limited run, include casting the entire helmet in a multi part mold, preferably a two-part mold. This two-part mold could have half of the helmet with one horn in a first mold and the other half of the helmet with the other horn in a second mold. The two halves could be joined at the center-line of the helmet, connecting the right and left sides, and sonic welded to form a complete helmet. Once completed the helmet may be painted." (Specification at paragraph [0100]) (emphasis added).

This portion of the specification shows that the horn (secondary element), skirt, and crown may all be integrally molded or otherwise monolithic. As such, any trepidation of the Examiner in allowing claims that might suggest a particular arrangement of elements in the formation process in the face of the lengthy description of the inventive headgear's manufacture calling for the horn (secondary element) and skirt to be cast together and then adhered to the crown should be suppressed. Indeed, multiple methods by which the inventive headgear may be formed are explicitly disclosed.

Furthermore, Applicant notes that formation of the inventive headgear is described using basic and generally well known methods. It is submitted that one skilled in the art of model making, sculpture, or the like would readily adapt from

the disclosed procedures to other similar procedures. For example, if it were to be found that the specification only supported the teaching of a secondary element and skirt being formed integrally and then adhered to the crown, one skilled in the art could readily adapt that procedure to (A) one in which the crown and skirt are formed together and the secondary element adhered or (B) one in which the crown, skirt, and secondary element are all molded together or are otherwise monolithic.

The Examiner also notes that the intersection/attachment area may not be different from such area taught by the *Fineberg* reference. As a comparison, FIG. 4 of the *Fineberg* reference is depicted below.



As shown in FIG. 4 of *Fineberg*, *Fineberg* discloses a crown 10 (col. 2 l. 36, "shell 10.") and a horn, which is the horizontally oriented shaft shown in FIG. 4 (col. 2 ll. 42-43, "horns 28 and 29"). In *Fineberg*, the horn 28, 29 does intersect with the crown 10. However, in order to compare the *Fineberg* reference with the present invention, one must look to the present claims.

In claim 2, a portion of the exterior surface of the crown must be raised above the intersection area to evince an association between the secondary element and the manner in which it extends from the crown. In *Fineberg*, no portion of the crown is raised above the intersection area. Rather, the

crown 10 continues along a single arcuate path - from which it does not deviate - until the crown meets the horn 29.¹

Therefore, it is clear that no portion of the *Fineberg* crown changes in its geometry to rise above the intersection area as claimed in claim 2, and claim 2 is believed to be allowable. Each of the other remaining independent claims, namely claims 6, 14, 15, 16, 21, and 32, include similar features, and are likewise believed to be allowable.

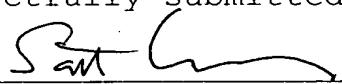
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: December 7, 2007

Respectfully submitted,

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¹ It is specifically noted here that element 24 of *Fineberg*, the wool covering, is a separate and distinct element from the crown. (col.2 ll.26-28, "A covering 24 of wool or other suitable simulation of hair is adapted to be received over the shell base in a neat fit to enclose it. . ." (emphasis added)).